



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

INVISTA S.a.r.l., LLC
(VPDES Permit No. VA0002160)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and INVISTA, S.a.r.l., LLC, for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "WWTP" means the wastewater treatment plant and conveyance systems.
7. "INVISTA" and "Company" means INVISTA S.a.r.l., LLC which owns and operates the Waynesboro WWTP.
8. "Site" means the whole company site including real property and buildings located at 400 DuPont Boulevard, Waynesboro in Augusta County.
9. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
10. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0002160 issued to INVISTA, which became effective May 28, 2002 and expires May 28, 2007. The Permit was modified April 30, 2004 to reflect a change of ownership.
11. "NOV" means Notice of Violation.
12. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.
13. "DMR" means Discharge Monitoring Report.

SECTION C: Findings of Fact and Conclusions of Law

1. INVISTA owns and operates the WWTP at the Site serving the Company which manufactures nylon and spandex fibers in Augusta County, Virginia. The WWTP discharges treated wastewater, non-contact cooling water and storm water to the South River in the Shenandoah River subbasin, Potomac River basin.
2. INVISTA experienced 10 unusual discharges (bypass/overflows) from the wastewater treatment sump at the WWTP during the period of June 2005 through September 2005, eight (8) of which were not reported to DEQ within 24 hours as required by the Permit. INVISTA reported these discharges on the Facility's DMRs and on cover letters submitted with the DMRs. These bypass/overflows were of partially treated wastewater and storm water. These bypass/overflows, however, were not properly monitored. According to INVISTA's follow-up letters, the unusual discharges were attributable to equipment breakdown and rainfall events.

DEQ issued NOV's for these unusual discharges (bypass/overflows) on September 14, 2005 and October 17, 2005. (See Item number 6 and Item number 11 below for details).
3. In June and July 2005, INVISTA experienced and reported to DEQ two (2) ammonia exceedances at Outfall 011. In the follow-up written report, INVISTA stated that the exceedances were caused by integrity problems in the storm and process sewers leading to the Outfall.

4. On August 12, 2005, DEQ issued Warning Letter Number W2005-08-V-1013 to INVISTA citing an ammonia effluent limitation violation at Outfall 011 which occurred in June 2005.
5. On September 1, 2005, INVISTA experienced and reported an unpermitted discharge of coal ash to the South River resulting from a spill. In the follow-up written report, INVISTA stated that the discharge occurred because an employee washed spilled coal ash into a storm sewer.
6. On September 14, 2005, DEQ issued NOV Number W2005-09-V-0006 to INVISTA citing July 2005 bypass/overflows which were not reported within 24 hours and an ammonia effluent limitation violation occurring during July 2005.
7. On September 30, 2005, DEQ met with INVISTA representatives in an informal conference to discuss the September 14, 2005, NOV and resolution of outstanding violations. The September 30, 2005 meeting included discussions of the Facility operations, unpermitted discharges, the bypass/overflows, and reporting obligations. DEQ requested INVISTA to submit a plan and schedule of corrective actions to address the issues raised in the NOV and prior Warning Letter.
8. On September 30, 2005, INVISTA experienced and reported a bypass/overflow of treated wastewater at a mix box that occurred when two pumps cut out and were restarted causing an overflow discharge at the mix box. INVISTA estimated that approximately 6000 gallons of treated wastewater was released to the South River.
9. On October 3, 2005, INVISTA reported to DEQ an unpermitted discharge of coal ash to the South River. In the follow-up written report of this incident, INVISTA stated that the coal ash discharge was due to an equipment failure in the ash handling system. On October 4, 2005, DEQ investigated the report and discovered visible coal ash on rocks and the river bottom for approximately 30 yards immediately downstream of Outfall 001.
10. On October 5, 2005, DEQ advised INVISTA to vacuum the visible particulate materials from the stream bottom. A storm event, however, washed away the deposit before INVISTA's contractor could mobilize to vacuum up the deposit.
11. On October 17, 2005, DEQ issued NOV Number W2005-10-V-0002 to INVISTA for bypass/overflows events occurring in August 2005.
12. On October 27, 2005, INVISTA reported to DEQ an unpermitted discharge from the anoxic tank which released an estimated 10,900 gallons of partially treated wastewater. According to INVISTA's follow-up report, this discharge was caused by a faulty flow meter in the WWTP.
13. By letter dated October 28, 2005, DEQ received INVISTA's corrective action plan and schedule to address all of the outstanding wastewater issues at the WWTP. Portions of this plan and schedule have been incorporated into Appendix A of this Order.

14. On November 4, 2005, DEQ met with INVISTA's representatives on Site in an informal conference to discuss the outstanding wastewater issues at the WWTP including the October 17, 2005, NOV and resolution of the violations. The November 4, 2005 meeting included discussions and visual inspections of Facility operations, including the areas where the coal ash and anoxic tank spills occurred.
15. On November 5, 2005, INVISTA reported to DEQ a spill of titanium dioxide to the South River. According to INVISTA's follow-up report, this release was caused by an on-site contractor who mistakenly filled a tank in the WWTP normally reserved for storm water.
16. On November 9, 2005, DEQ issued NOV Number W2005-11-V-00010 to INVISTA for the unpermitted discharges of coal ash on September 1, 2005, and the coal ash spill on October 2, 2005. In addition, the NOV cited a bypass/overflow that occurred on September 30, 2005 and an unauthorized discharge from the anoxic tank on October 26, 2005. The titanium dioxide spill was not cited on the November 9, 2005 NOV.
17. In November 2005, INVISTA experienced and reported ammonia exceedances at Outfall 011.
18. In January 2006, INVISTA experienced and reported ammonia exceedances at Outfall 011.
19. On February 3, 2006, DEQ issued NOV Number W2006-02-V-0009 to INVISTA for the November 5, 2005 titanium dioxide spill and apparent violations of ammonia limitations occurring in November 2005 and an unauthorized discharge on January 12, 2006.
20. On March 6, 2006, DEQ issued NOV Number W2006-03-V-0001 to INVISTA for apparent violations of ammonia limitations occurring in January 2006.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §62.1-44.15 and upon consideration of Va. Code § 10.1-1186.2, the Board orders INVISTA, and INVISTA agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders INVISTA, and INVISTA voluntarily agrees, to pay a civil charge of **\$26,900** in settlement of the violations cited in this Order.

1. INVISTA shall pay **\$6,881.00** of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, INVISTA shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

2. INVISTA shall satisfy **\$20,019** of the civil charge upon completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
3. The net cost of the SEP to INVISTA shall not be less than the amount set forth in Paragraph D.2. If it is, INVISTA shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net costs" means the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
4. By signing this Order INVISTA certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
5. INVISTA acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by INVISTA to a third party, shall not relieve INVISTA of its responsibility to complete the SEP as contained in this Order.
6. In the event it publicizes the SEP or the SEP results, INVISTA shall state in a prominent manner that the project is part of a settlement for an enforcement action.
7. The Department has the sole discretion to:
 - a. Authorize any alternate SEP proposed by the Facility; and
 - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that INVISTA has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify INVISTA in writing. Within 30 days of being notified, INVISTA shall pay the amount specified in Paragraph 2 above to DEQ as provided in Paragraph 1 above.

9. During the estimated nine months' interim during which WWTP improvements will be completed, INVISTA will operate the Plant in a workmanlike fashion so as to produce the best quality effluent of which it is capable.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of INVISTA, for good cause shown by INVISTA, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, INVISTA admits the jurisdictional allegations, but does not admit to the factual findings, and conclusions of law contained herein.
4. INVISTA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. INVISTA declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by INVISTA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. INVISTA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. INVISTA shall show that such circumstances

were beyond its control and not due to a lack of good faith or diligence on its part. INVISTA shall notify the VRO Director in accordance with the terms of the Permit, i.e., orally within 24 hours, and in writing within 5 days thereafter, when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the VRO Director in accordance with the notification requirements as set forth above shall constitute a waiver of any claim by INVISTA as to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and INVISTA. Notwithstanding the foregoing, INVISTA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. INVISTA petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to INVISTA.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve INVISTA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

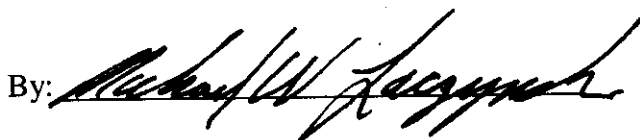
12. The undersigned representative of INVISTA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind INVISTA to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of INVISTA.

13. By its signature below, the INVISTA S.a.r.l., LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 2, 2006.


David K. Paylor, Director
Department of Environmental Quality

INVISTA S.a.r.l., LLC voluntarily agrees to the issuance of this Order.

By: 

Title: Waynesboro Plant Manager

Date: April 7, 2006

Commonwealth of Virginia

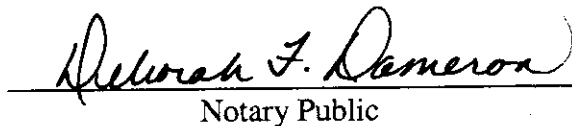
City/County of Waynesboro

The foregoing document was signed and acknowledged before me this

7th day of April, 2006, by Michael W. Laczynski,
(name)

who is Waynesboro Plant Manager of INVISTA S.a.r.l., LLC on behalf of the Company.

(title)


Notary Public

My commission expires: January 31, 2009.

**APPENDIX A
SCHEDULE OF COMPLIANCE
INVISTA WWTP**

WWT Sump Effluent Sampling

1. **By February 10, 2006**, INVISTA shall submit to DEQ for review and approval an engineering analysis and a sampling program to evaluate the level of treatment the coal filters exert on the further treatment of wastewater/storm water that is discharged from Outfall 101, including an assessment of toxicity. INVISTA shall respond to comments regarding the sampling program **within 30 days** of receipt of written comments.

Within two (2) weeks after receipt of written approval of the sampling program from DEQ, INVISTA shall implement the sampling program which sampling shall include two sets of wastewater/storm water effluent samples before (within the WWTP sump) and after the coal filter (at Outfall 101). Each set of samples shall include all the parameters listed in the Permit Part I.A.3., for Outfall 101 and Permit Part I.A.1. for Outfall 001.

Upon approval by DEQ, the bypass monitoring plan shall be incorporated by reference into this Order and will be enforceable under the Order.

2. **Within three (3) months** following DEQ's approval of the sampling program: INVISTA shall submit to DEQ for review and approval the following: (1) the sampling results from the sampling program; (2) an engineering analysis of the effect of the coal filters on wastewater treatment; and (3) a plan for further monitoring of WWTP sump bypasses/overflows until the bypass/overflow point is addressed in the Permit. INVISTA shall respond to comments regarding these items **within 30 days** of receipt of written comments.

Sewer Lines Corrective Actions

3. INVISTA has televised sections of the Company's process and storm sewers to identify problems that may have contributed to the effluent limitation violations.

By April 1, 2006, INVISTA shall submit to DEQ a written report that identifies any problems/defects found in the process and storm sewers leading to Outfall 011, and which shall include recommendations for corrective action. INVISTA shall inform DEQ by contemporaneous correspondence of INVISTA's determination of appropriate corrective action to address any defects in the process wastewater and storm water sewers which drain to Outfall 011.

4. **By April 30, 2006**, INVISTA shall finalize the detail of the scope of work for the sewer line corrective action work, and have a contract to perform the corrective action to address the sewer problems/defects described in the April 1, 2006 submittal.
5. **By December 12, 2006**, INVISTA shall complete the replacement/rehabilitation work of the storm and process sewer defects described in the April 1, 2006 submittal.

Spare Parts/Spare Equipment

6. **By March 31, 2006**, INVISTA shall obtain/receive all the spare parts and spare equipment ordered as listed in the Company's letter dated November 28, 2005. INVISTA shall include the list of spare parts and equipment in the O&M Manual and submit the revised pages to the O&M Manual to DEQ for review and approval.

Evaluation of Potential Sources of Wastewater

7. **By February 28, 2006**, INVISTA shall submit to DEQ for review and approval a report evaluating the INVISTA's VPDES Permit sampling program and operator training to determine if additional corrective actions are needed to ensure compliance with Permit requirements. The report shall include a plan and schedule of corrective actions to ensure proper monitoring and sampling in compliance with Permit requirements. INVISTA shall address any comments on the plan **within 30 days** of receipt of written comments. Upon approval, the plan shall be incorporated by reference into this Order and will be enforceable under the Order.
8. **By February 28, 2006**, INVISTA shall submit to DEQ for review and approval a report evaluating the Company's compliance reporting procedures. The report shall include the corrective actions it has taken and/or a plan and schedule of additional corrective action, if necessary, to ensure compliance with the Permit's reporting requirements. INVISTA shall address any comments on the plan **within 30 days** of receipt of written comments. Upon approval, the plan shall be incorporated by reference into this Order and will be enforceable under the Order until such time as any identified sources in the plan are incorporated into the Permit re-issuance.

Evaluation of Potential Sources of Wastewater

9. **By May 1, 2006**, INVISTA shall complete and submit to DEQ for review and approval a wastewater source evaluation report to ensure that all wastewater sources within the WWTP, including potential unpermitted bypass/overflow points are identified and monitored in accordance with the Permit. The report shall also identify any other potential sources of ash contamination. The report shall include a plan and schedule to address any compliance issues other than unpermitted bypass/overflow points. INVISTA shall address any comments on the plan **within 30 days** of receipt of written comments. Upon approval, the plan shall be incorporated by reference into this Order and will be enforceable under the Order.

GENERAL REQUIREMENTS

10. INVISTA shall submit quarterly progress reports to DEQ, with the first report being due **April 10, 2006**. Subsequent Progress Reports will be due by **July 10, October 10, January 10**, and **April 10**, along with the Facility's Discharge Monitoring Report until the cancellation of this Order. The quarterly progress reports shall contain:
 - a. a summary of all work completed since the previous progress report in accordance with this Order;
 - b. a projection of the work to be completed during the upcoming semi-annual period in accordance with this Order; and
 - c. a statement regarding any anticipated problems in complying with this Order.

APPENDIX B
SUPPLEMENTAL ENVIRONMENTAL PROJECT
INVISTA

1. The SEP to be performed by INVISTA is delivery of a check for **\$20,019** to an appropriate City of Waynesboro, Virginia official to be used for the purposes of purchasing hazmat equipment for the Waynesboro Fire Department in Waynesboro, Virginia.
2. **Within 30 days** of the effective date of this Order, INVISTA shall send funds totaling not less than **\$20,019** to the City of Waynesboro, Virginia ("Waynesboro") with the express provisions that: a) those funds shall be used only for purchase of hazmat equipment for the City of Waynesboro Fire Department, as specified in a letter dated **March 27, 2006** from Charles F. Scott, to Mike Lacynski, Plant Manager of INVISTA; b) that the purchase and delivery of such equipment shall be completed not later **than September 30, 2006**; and c) that **within 10 days** of delivery of such equipment, Waynesboro will submit to INVISTA a copy of the invoice from the equipment vendor, an itemized list of equipment delivered, and written verification of delivery. If sufficiently detailed, the invoice may serve as the itemized list for purposes of this requirement.
3. INVISTA shall submit to the Department written verification of the final overall and net cost of the SEP in the form of a certified statement itemizing costs and proof of payment and shall submit invoices, itemized lists and written verification of delivery of the equipment specified in Paragraph 2 above **within 30 days** of delivery of such equipment to the City of Waynesboro Fire/EMS Department.